

**AMENDMENTS TO THE DRAWINGS**

Figure 66 has been amended as discussed in the Remarks section of this response. Replacement Sheet 29 of 65 is submitted herewith.

## **REMARKS**

### **Claim Amendments**

Claims 48, 52, 55, and 57 have been amended to more particularly point out the claimed subject matter. Claim 52 has also been amended to correct a minor typographical error. Support for these amendments is found throughout the specification and the drawings, *see, e.g.*, ¶¶ [0140]-[0141] and Figs. 65 and 66.

New claims 60-61 have been added. Support for this amendment is found throughout the specification and the drawings, *see, e.g.*, ¶¶ [0140]-[0141] and Fig. 66.

None of the amendments herein introduce new matter.

### **Replacement Sheet**

Applicant submits Replacement Sheet 29 of 65 to amend Figure 66 to include a width 531 a central longitudinal axis 533. Support for these amendments is found throughout the specification, *see, e.g.*, ¶ [0140]. No new matter has been added.

### **§ 102(b) Rejection**

Claims 48, 50, and 52-59 stand rejected under §102 as being anticipated by U.S. Patent No. 4,779,816 (Varlet). Applicant requests reconsideration.

As amended, claim 48 requires, *inter alia*, "first and second opposed sides...spaced apart a lateral distance" and a "first saddle extending at least half of the lateral distance across the body in a direction from the first side toward the second side." The Action alleges that Varlet's cavity 5 is analogous to the claimed first saddle. *See*, Office Action, p. 2. However, as shown in Fig. 1 of Varlet, the cavity 5 does not

extend at least half of the lateral distance across the body of the cord winder, as claimed. Instead, the cavity 5 -- the alleged first saddle -- extends only a small portion - not at least half - of the lateral distance across the body. See, Varlet, col. 2, lines 3 - 5 and Fig. 1. For at least this reason, independent claim 48 and its corresponding dependent claims are not anticipated by Varlet.

Claim 52 requires, *inter alia*, a "planar unitary body having a central longitudinal axis disposed generally transverse to the first end and extending through the first and second saddles." The Examiner alleges that Varlet's cavities 5 and 4 are analogous to the claimed first and second saddles respectively. However, as shown in Fig. 1, a central longitudinal axis of the cord winder does not extend through both the first and second saddles, as claimed. Instead, the alleged saddles are laterally spaced apart such that no longitudinal axis can extend through both alleged saddles. For at least this reason, claim 52 is not anticipated by Varlet.

Claim 55 and requires, *inter alia*, "the first saddle extending across the planar body in a direction from the first side toward the second side" and "the second saddle extending across the planar body in a direction from the second side toward the first side such that at least a portion of the second saddle laterally overlaps at least a portion of the first saddle." Again, the Examiner alleges that Varlet's cavities 5 and 4 are analogous to the claimed first and second saddles. However, as shown in Fig. 1 of Varlet, the alleged second saddle does not laterally overlap any portion of the first alleged saddle, as claimed. Instead, the closest portion of the alleged second saddle is laterally spaced apart from the closest portion of the alleged first saddle such that no

portion of the alleged second saddle overlaps any portion of the alleged first saddle.

For at least this reason, claim 55 is not anticipated by Varlet.

Independent claim 57 requires, *inter alia*, "the first saddle extending at least half of the lateral width across the planar body" and "the second saddle extending at least half of the lateral width across the planar body such that at least a portion of the second saddle laterally overlaps at least a portion of the first saddle." Again, Applicant submits that neither the alleged first nor second saddle in Varlet extend at least half of the lateral distance across the body for reasons substantially similar to those expressed above for claim 48. Further, the alleged second saddle does not overlap at least a portion of the alleged first saddle for reasons substantially similar to those expressed above for claim 55. Accordingly, Applicant submits that claim 57 is not anticipated by Varlet.

Independent claim 61 requires, *inter alia*, "the second saddle extends at least half of the lateral distance across the body in a direction from the second side to the first side." Applicant submits that Varlet's alleged second saddle does not extend at least half of the lateral distance across the body, as claimed, for reasons substantially similar to those expressed above for claim 48. Instead, the alleged second saddle -- cavity 4 -- extends only a small portion - not at least half - of the lateral distance across the body. See, Varlet, Fig. 1. Accordingly, Applicant submits that claim 61 is not anticipated by Varlet.

### **§ 103 Rejection**

Claims 49 and 51 were rejected under §103 over Varlet in view of U.S. Patent No. 276,097 (Collins). Applicant notes that Varlet fails to teach or suggest all the limitations of the corresponding base claim -- claim 48 -- as discussed above. Moreover Collins fails to cure this defect. As such Applicant submits that claims 49 and 51 define patentable subject matter for substantially the same reasons as their corresponding independent claim 48.

Claim 51 requires, *inter alia*, that “wherein the planar body, when implanted, extends in compression between the first spinous process at the first end and the second spinous process at the second end so as to distract the adjacent spinous processes.” The Examiner acknowledges that Varlet does not disclose this limitation. However the Action never describes how Collins or any other reference cures this defect. Thus, the Action never sets forth the basis for the §103 rejection of claim 51, rendering the rejection improper. Applicant notes that if the Examiner maintains the §103 rejection of claim 51, then the next communication must set forth the basis for doing so. In addition, the Examiner is reminded that if claim 51 is rejected in the next Action, the MPEP requires that the next Action must be non-final because no basis for the rejection of this claim was provided in the current Action.

In view of the above amendments and remarks, the Applicant submits that the present application is in condition for allowance and such action is respectfully requested.

Respectfully submitted,  
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